

1980

c 80 The Pension Benefits Amendment Act, 1980

Ontario

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Bibliographic Citation

The Pension Benefits Amendment Act, 1980, SO 1980, c 80

Repository Citation

Ontario (1980) "c 80 The Pension Benefits Amendment Act, 1980," *Ontario: Annual Statutes*: Vol. 1980, Article 82.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1980/iss1/82

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CHAPTER 80

An Act to amend The Pension Benefits Act

Assented to December 12th, 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 1 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

s. 1 (1),
amended

(da) "Fund" means the Pension Benefits Guarantee Fund established by section 25b.

(2) Subclause iv of clause h of subsection 1 of the said section 1 is repealed and the following substituted therefor:

s. 1 (1) (h) (iv),
re-enacted

(iv) a deferred profit sharing pension plan other than an employee's profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148
2. Clause b of subsection 3 of section 21 of the said Act is amended by striking out "\$10" in the fifth line and inserting in lieu thereof "\$25".

s. 21 (3) (b),
amended
3. Section 23a of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 113, section 6, is repealed and the following substituted therefor:

s. 23a,
re-enacted

23a.—(1) Where a sum is received by an employer from an employee under an arrangement for the payment of the sum by the employer into a pension plan as the employee's contribution thereto, the employer shall be deemed to hold the sum in trust for the employee until the sum is paid into the pension plan whether or not the sum has in fact been kept separate and apart by the employer and the employee has a lien upon the assets of the employer for such amount that in the ordinary course of business would be entered in books of account whether so entered or not.

Employee
contribution
to pension
fund is
trust fund
in hands of
employer

(2) For the purposes of subsection 1, any sum withheld by an employer, whether by payroll deduction or otherwise, from

Idem:
payroll
deductions

moneys payable to an employee, shall be deemed to be a sum received by the employer from the employee.

Employer's
contributions
held in
trust

(3) Where an employer is required to make contributions to a pension plan, he shall be deemed to hold in trust for the members of the plan an amount calculated in accordance with subsection 4, whether or not,

- (a) the employer contributions are payable into the plan under the terms of the plan or this Act; or
- (b) the amount has been kept separate and apart by the employer,

and the members have a lien upon the assets of the employer in such amount that in the ordinary course of business would be entered into the books of account whether so entered or not.

Determining
amount of
trust funds

(4) For the purpose of determining the amount deemed to be held in trust under subsection 3 on a specific date, the calculation shall be made as if the plan had been wound up on that date.

s. 23b,
amended

4. Section 23b of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 113, section 6, is amended by adding thereto the following subsections:

Idem

(6) Every employer shall provide to each member of his registered pension plan such information respecting the member's entitlements under the plan as is prescribed by regulations at least once in every three years or within such shorter time period as is prescribed.

Idem

(7) Upon the written request by a member of a registered pension plan, an employer shall make available to the member such documents and statistical, actuarial and financial information respecting the plan as is prescribed by the regulations in the form and within the time period prescribed.

s. 23d,
enacted

5. The said Act is amended by adding thereto the following section:

Employee
option on
termination
or wind up

23d.—(1) Where a pension plan is wound up, in whole or in part, an employee in Ontario whose membership in the plan is terminated and who at the date of termination has been in the service of his employer for a continuous period of ten years or has been a member of the plan for a period of ten years and who has attained the age of forty-five years has the right to elect,

- (a) where the employee is eligible under the terms of the plan for an immediate pension, to receive an immediate pension benefit in accordance with the benefit formula of the plan and the terms set out in the plan;

(b) to receive a pension benefit starting payment at,

(i) his normal retirement age under the plan, or

(ii) where the pension plan provided for early retirement with an unreduced pension benefit, the age prior to his normal retirement age at which the employee would have been eligible to receive his pension benefit without reduction, if the plan and his participation in it had continued,

whichever comes first;

(c) where the pension plan provides for early retirement with a reduced pension benefit, to receive a reduced pension benefit starting payment at any age he would have been entitled to such benefit if the plan and his participation in it had continued;

(d) to transfer his pension benefit credit to a pension plan of his new employer provided the transfer is accepted by the pension plan of his new employer; or

(e) to transfer the amount of his pension benefit credit to a registered retirement savings plan.

(2) Where a pension plan is wound up, in whole or in part, all bridging supplements that are excluded from the requirements of clause *a* of subsection 1 of section 21 shall be included in the purpose of calculating the pension benefit of all employees who meet the requirements set out in subsection 1. Bridging supplements included in computation

(3) Where the employee is entitled to a pension benefit under clause *a*, *b* or *c* of subsection 1, and the pension plan does not provide an automatic or optional survivor benefit, the employee shall have the right to elect to receive his pension benefit, the amount of which may be reduced or increased by provision for the payment of an optional annuity to a survivor or to the estate of the employee or by variation of the terms of payment of such annuity to any person after the employee's death. Survivor option

(4) An employee to whom subsection 1 applies shall make his election within three months after the termination or wind up or within three months after the date of a declaration of wind up under section 25, whichever is later, and if no election is made, the employer shall make the election for the employee. Where employee does not elect

(5) Subsections 1, 2 and 3 apply notwithstanding any provision to the contrary contained in the pension plan. Application of subs. 1-3

Notice period
included in
calculating
pension
benefits
1974, c. 112

(6) For the purposes of calculating pension benefits on the wind up of a pension plan, the period of notice required to be given to a terminated employee under Part XII of *The Employment Standards Act, 1974* shall be included in computing the employee's length of service with his employer or his time in the plan, as the case may be.

s. 25,
amended

6.—(1) Section 25 of the said Act is amended by adding thereto the following subsections:

Idem

(1a) The Commission may declare that a defined benefit pension plan is wound up in whole or in part for the purposes of this Act on such date as the Commission in its discretion considers appropriate, where,

R.S.C. 1970,
c. B-3

(a) the employer providing the plan is bankrupt within the meaning of the *Bankruptcy Act* (Canada);

(b) the plan has been terminated in whole or in part and the employer has failed to meet the funding requirements prescribed;

(c) the plan has been terminated in whole or in part and the Commission is of the opinion that because of his insolvency the employer will not be able to meet the funding obligations prescribed by regulation;

(d) the Commission has reason to believe that the amount of payments that the Fund may be required to guarantee may be expected to increase unreasonably if the plan is not wound up; or

(e) such other event as is prescribed by regulation occurs,

.

Commission
as
administrator

(4) Where a defined benefit pension plan is declared to be wound up in whole or in part by the Commission, the Commission, where it has reason to believe that the assets of the plan are not sufficient to provide full payment of the contributions and pension benefits set out in section 25c, may take control of the assets of the pension plan and act as administrator of the plan for the purpose of the wind up.

s. 25 (2),
amended

(2) Subsection 2 of the said section 25 is amended by adding at the end thereof "or 1a".

s. 25 (3),
amended

(3) Subsection 3 of the said section 25 is amended by inserting after "subsection 1" in the second line "or 1a".

7. The said Act is further amended by adding thereto the following sections: ss. 25b-25f, enacted

25b.—(1) There is established a fund to be known as the Pension Benefits Guarantee Fund which shall be administered by the Commission. Fund established

(2) The purpose of the Fund is to guarantee payment of the pension benefits set out in subsection 1 of section 25c where a defined benefit pension plan is wound up under subsection 1a of section 25 subject to such limits and qualifications as are set out in the regulations. Purpose

(3) If, at any time, the amount standing to the credit of the Fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Fund on such terms and conditions as the Lieutenant Governor in Council directs. Advances or loans to Fund

25c.—(1) The pension benefits of a defined benefit pension plan that is wound up under subsection 1a of section 25 that are guaranteed by the Fund are, Benefits guaranteed

- (a) all pension benefits that must be contractually provided under clause *a* of subsection 1 of section 21 provided in respect of service in Ontario of an employee who, at the date of wind up of the plan, has been in the service of his employer for a continuous period of ten years or has been a member of the plan for a period of ten years and who has attained the age of forty-five years;
- (b) all pension benefits in the course of payment to a retired member of the plan or his survivor or estate or to any person designated by the employee provided in respect of his service in Ontario and any such pension benefits the employee's survivor or estate or any person designated by him may become entitled to;
- (c) all pension benefits that must be contractually provided under clause *a* of subsection 1 of section 21 provided in respect of service in Ontario of a former member of the plan who, at the date of termination of his employment, had been in the service of his employer for a continuous period of ten years or was a member of the plan for a period of ten years and who had attained the age of forty-five years; and
- (d) the value of all employee contributions made to the plan in respect of service in Ontario to the extent that such

value exceeds the value of pension benefits provided to an employee under clause *a*, *b* or *c*.

Inclusion
of bridging
supplements
and elections

(2) For the purpose of subsection 1, "pension benefits" includes bridging supplements, whether or not the bridging supplements have been excluded from the requirements of clause *a* of subsection 1 of section 21 and any pension benefit that the employee has elected to receive under section 23*d*.

Payments
not
guaranteed

(3) The payment of,

- (a) a pension benefit provided by a plan that has been in effect for less than three years at the date of termination or wind up; or
- (b) any increase to a pension benefit which increase became effective within three years before the date of termination or wind up,

is not guaranteed by the Fund.

Where a
defined
benefit
pension plan
discontinued

25*d*. In addition to any amounts the employer is liable to pay under subsection 2 of section 22, where a defined benefit pension plan is terminated or wound up or the plan is amended so that it is no longer a defined benefit pension plan, the employer is liable to the plan for the difference between,

- (a) the value of the assets of the plan; and
- (b) the value of pension benefits guaranteed under subsection 1 of section 25*c* and any other pension benefit vested under the terms of the plan,

and the employer shall make payments to the insurer, trustee or administrator of the pension plan to fund the amount owing in such manner as is prescribed by regulation.

Lien on
assets

25*e*. Where the Commission pays into a pension plan because the assets of the plan are not sufficient to finance the pension benefits guaranteed under subsection 1 of section 25*c*, the Commission has a lien and charge on the assets of the employer for the amount of the payment and interest thereon and the Commission may enter into an agreement with the employer providing for repayment of the amount advanced together with interest thereon upon such terms and conditions as the Commission considers appropriate.

Amendments
reducing
benefits
prohibited

25*f*. No amendment to a pension plan shall reduce the pension benefit credits accrued to the date of the amendment.

8. The said Act is further amended by adding thereto the following section: s. 27a,
enacted

27a. *The Statutory Powers Procedure Act, 1971* does not apply to determinations of the Commission under this Act or the regulations. Non-applica-
tion of
1971, c. 47

- 9.—(1) Section 28 of the said Act is amended by adding thereto the following clauses: s. 28,
amended

(ab) governing defined benefit pension plans and governing the maintenance and administration of the Fund by the Commission including, without limiting the generality of the foregoing, regulations,

- (i) governing the procedures to be followed by employers in reporting to the Commission and prescribing information to be provided in reports,
- (ii) governing the procedures to be followed in making and determining claims from the Fund,
- (iii) prescribing the maximum pension benefits guaranteed by the Fund or prescribing a method of calculating the maximum pension benefits,
- (iv) prescribing the method of calculating the total limit of the Fund's liability,
- (v) prescribing classes of pension plans and exempting any class of plan or any pension plan from any provision of this Act or the regulations,
- (vi) prescribing the interest payable on loans from the Fund to a pension plan,
- (vii) prescribing information to be submitted on the wind up of a pension plan, the person who shall submit the information and the time within which the information is to be submitted,
- (viii) specifying the priorities in allocating assets of a defined benefit pension plan on its wind up,
- (ix) authorizing the Commission to appoint a trustee with investment powers in respect of money in the Fund,

- (x) governing the procedures to be followed by the administrator of a pension plan in the distribution of assets of the plan on winding up,
- (xi) requiring premiums to be paid into the Fund by employers and prescribing the amount of the premiums or the method of calculating the premiums, classifying pension plans and providing for different premiums in respect of different classes of plans,
- (xii) governing assignments or transfers of defined benefit pension plans from one employer to another and setting out the obligations and liabilities of the transferring employer,
- (xiii) governing the termination or wind up of a defined benefit pension plan,
- (xiv) prescribing funding requirements into a plan for purposes of section 25*d* and authorizing the Commission to vary the requirements where financial hardship would result to the employer,
- (xv) prescribing events upon the occurrence of which the Commission may declare a plan wound up under clause *e* of subsection 1*a* of section 25;

.

- (*ka*) requiring the furnishing of documents and information by employers to members of pension plans and prescribing time limits within which such documents and information are to be furnished;

.

- (*p*) defining "defined benefit pension plan" and "bridging supplement" for the purposes of this Act and the regulations.

s. 28,
amended

- (2) The said section 28 is further amended by adding thereto the following subsection:

Retroactive
regulations

- (2) A regulation made under this Act may be made retroactive in its application.

s. 29,
amended

- 10. Section 29 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 133, section 8, is further amended by adding thereto the following subsection:

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose. Time limit for commencing proceedings

- 11.** This Act shall be deemed to have come into force on the 4th day of December, 1980. Commencement
- 12.** The short title of this Act is *The Pension Benefits Amendment Act, 1980*. Short title

